IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.1430 of 2000

Date of Decision: February 12, 2007

Ashok Kumar

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Jainainder Saini, Advocate,
for Mr.Sandeep Dasuja, Advocate,
for the petitioner.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH J.

Ashok Kumar petitioner was prosecuted for an offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. The allegation against him is that on 26.4.1991, he was intercepted by Dr.C.P.Wadhwa in the area of Mawat Colony, Ferozepur Zirka, while he was carrying 8 Kgs. of cow milk in a drum on his cycle. The same obviously was

meant for public sale. 750 Mls. of cow milk was accordingly bought and by disclosing his identity, demand for drawing sample of the cow milk was made. After properly mixing the milk, as required, the same was divided into three equal parts and put in three dry and clean empty bottles. The bottles were sent for analysis and the same was found adulterated. As per opinion of Public Analyst, the sample contained 6.8% of milk solids not fat against minimum specified limit of 8.5% laid down for cow milk in the table of the rules. On receipt of the report, a complaint was filed in the court against the present petitioner. The petitioner was tried and held guilty for an offence under Section 16 of the Prevention of Food Adulteration Act. Thereafter the petitioner was sentenced to undergo rigorous imprisonment for six months coupled with fine. The petitioner preferred an appeal against the same order before Addl.Sessions Judge, Gurgaon. Before the Appellate Court, it was submitted that the notice for accusation had been served on the petitioner by Shri Dharam Pal, Judicial Magistrate Ist Class, Ferozepur Zirka. It was a summary trial. After service of notice, the case was transferred to the Court of Shri R.D.Jatain. The complete evidence was recorded by the said Magistrate, but Shri Baljit Singh, Sub Divisional Judicial Magistrate thereafter proceeded to decide the matter. This, according to the counsel representing the petitioner, vitiated the trial as in terms of Section 326 Cr.P.C., the case, which is tried summarily, is to be decided by a Judge, who had recorded the evidence. It was accordingly submitted that since this case was not decided by the Judge, who had recorded the evidence, the complete trial was vitiated and thus the conviction could not be sustained. In this

regard, reliance was placed on Rishi Kumar Vs. State of Haryana, 2000(2) RCR (Criminal) 670. Reference was also made to the cases of Amar Nath Vs. State of Haryana, 1996(2) Recent CR 655 and Lila Kishan Vs. State of Haryana, 1989(2) Recent Criminal Reports 332. These submissions made on behalf of the petitioners could not be controverted by the Public Prosecutor appearing before the trial Court. The Appellate Court was accordingly left with no option but to set-aside the conviction of the petitioner. The appeal was accordingly accepted and while setting-aside the judgment of conviction and order of sentence, the case was remanded back for fresh trial to the Court of Shri Baljit Singh, Sub Divisional Judicial Magistrate, Ferozepur Zirka. Being aggrieved against the direction for his re-trial, the petitioner filed the present revision petition.

I have heard the counsel for the parties.

The counsel for the petitioner has drawn my attention to the case of Rishi Kumar (supra) and also to the case of Ram Chander v. State through Govt.Food Inspector, Bhiwani, 2000(2) RCR (Criminal) 730. The counsel would contend that this court, while holding that summary trial is to be conducted as required under Section 16-A and Successor Magistrate could not rely upon the evidence, which was recorded by his predecessor, not only set-aside the proceedings, but did not remand the case for re-trial in view of the long pendency of the case. In Rishi Kumar's case (supra), after up-holding the view of the Appellate Court in setting-aside the conviction on identical grounds, this court further held that the petitioner could not be allowed to suffer for the fault of the court. Remand of the case after prolonged trial was not justified. The

relevant observations in this regard are as under:-

> "The petitioner cannot be allowed to suffer for the fault of the Court. We cannot lose sight of the fact that the petitioner was suffering the agony of the criminal proceedings since 1983. Earlier he was convicted by the trial Court. Then the case was remanded by the first Appellate Court to the trial Court. Again the petitioner suffered the agony of the criminal proceedings and his trial took 7 years when he was finally convicted by the Court of Chief Judicial Magistrate, Sirsa on 26.2.1990. The first Appellate Court should have taken proper care of his aspect that the petitioner was suffering the agony of the criminal proceedings since 1983."

Similarly in Ram Chander's case (supra) also the action of the Appellate Court in remanding the case for fresh trial after setting-aside the conviction in identical circumstances was held not proper and order of remand was set-aside. In this case also, the incident is of 26.4.1991. The petitioner was convicted on 12.11.1998. His appeal was allowed on 11.8.2000, when direction for his fresh trial was issued. The petitioner impugned the same by way of present revision petition, which is pending since the year 2000. Accordingly, the petitioner is being put to re-trial after a lapse of sixteen years. As already noticed by this court, the petitioner cannot be allowed to suffer for the fault of the court. The petitioner has faced the agony of trial for almost 6/7 years before he was convicted. He was able to succeed in his appeal, but still suffered the direction of facing a fresh trial. It can be said that the petitioner is suffering the agony of these

proceedings for the last sixteen years. Similar prayer was also made before the Appellate Court to seek an end to the agony of criminal prosecution, but still direction for holding a fresh trial of the petitioner was issued. The petitioner cannot be blamed for this situation, which is all doing of the court. No reason exists for shifting the blame on the petitioner. He cannot, thus, be made to suffer the consequences of something for which he is not responsible at all.

Accordingly the present revision is allowed. Directions of the Appellate court for fresh trial of the petitioner are set-aside.

February 12, 2007 (RANJIT SINGH)
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